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February 21, 2006

The Honorable Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: *Generic Proceeding to Examine Issues Related to BellSouth's Obligations
to Provide Unbundled Network Elements*; Docket No. 19341-U
Docket No. 2004-316-C

Dear Mr. Terreni:

Based on the Commission's website, it appears that earlier today, CompSouth filed a letter with the Commission stating that the Staff of the Florida Public Service Commission "has recommended that several of the decisions in the FPSC's order [that BellSouth addressed in its February 9, 2006 letter] be vacated."

Rather than characterizing the recommendation as CompSouth has done, BellSouth respectfully states that the recommendation to which CompSouth's letter refers states, in pertinent part:

Staff recommends, in an abundance of caution and to promote public confidence in the impartiality of its consideration of issues 5, 13, 16-18, and 22(b), that the Commission should vacate its decision in Issues 5, 13, 16-18, and 22(b), and direct that new staff members be assigned to review the existing record and prepare a new recommendation on these issues for the Commission's de novo consideration.

See Florida Staff Recommendation dated February 17, 2005 (Exhibit D to CompSouth's letter) at p. 4. The six issues that are the subject of the Florida Staff's recommendation are as follows:¹

¹ The Issue numbers referenced in this letter are the Issue numbers used in the Florida proceedings.

- Issue 5: Are HDSL-capable copper loops the equivalent of DS1 loops for the purpose of evaluating impairment?
- Issue 13: What is the scope of commingling allowed under the FCC's rules and orders and what language should be included in Interconnection Agreements to implement commingling (including rates)?
- Issue 16: Is BellSouth obligated pursuant to the Telecommunications Act of 1996 and FCC Orders to provide line sharing to new CLEC customers after October 1, 2004?
- Issue 17: If the answer to the foregoing issue is negative, what is the appropriate language for transitioning off a CLEC's existing line sharing arrangements?
- Issue 18: What is the appropriate ICA language, if any, to address access to call related databases?
- Issue 22(b) What is the appropriate language to implement BellSouth's obligation, if any, to offer unbundled access to newly-deployed or greenfield fiber loops, including fiber loops deployed to the minimum point of entry ("MPOE") of a multiple dwelling unit that is predominantly residential, and what, if any, impact does the ownership of the inside wiring from the MPOE to each end user have on this obligation?

According to the Florida Staff Recommendation, the Florida Commission is poised to vote on this recommendation on February 28, 2006.

One of the six issues that is the subject of the Florida Staff recommendation is commingling (Issue 13). It is important to note that the Florida Staff originally recommended that the Commission rule against BellSouth's position on this issue, and the Commission did not accept that recommendation. Additionally, two of the six issues (Issue 16 and Issue 17) address line sharing, and the evidence before this Commission shows that there are no line sharing arrangements between BellSouth and any CLEC in South Carolina.²

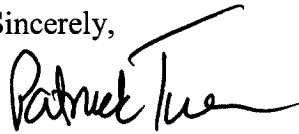
² See Hearing Transcript at 183.

The Honorable Charles Terreni
February 21, 2006
Page 3

Finally, BellSouth submits the attached letter that addresses the Florida Staff Recommendation in more detail.

In light of all of the above, BellSouth respectfully submits that CompSouth's suggestion that this Commission should simply disregard the Florida Commission's decisions in its change of law docket should be rejected. The Florida Commission's decision is legally sound, is consistent with many other State commission decisions throughout the country, and is sound precedent for the Commission to consider.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick W. Turner", with a long horizontal flourish extending to the right.

Patrick W. Turner

PWT/nml
Enclosures
623037

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February 16, 2006

VIA HAND DELIVERY AND US MAIL

Chairman Lisa Polak Edgar
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 041269-TP

Dear Chairman Edgar:

On February 14, 2006, counsel for Covad Communications Company ("Covad") submitted a written request that the Commission *sua sponte* withdraw portions of its staff recommendations and effectively reconsider its decision on certain issues (Issue Nos. 5, 13, 16-18, and 22) in the above-listed proceeding. Covad's request is based on the actions of Doris Moss, a former staff member, in submitting unsolicited, anonymous, and disguised emails to the Commission, and purportedly to BellSouth as well. This letter responds to Covad's letter and request.

Covad's basic premise for its request is simply wrong. Covad apparently believes that the action of a single staff member prevents the Commissioners from fulfilling their obligations under Florida law to independently evaluate and render decisions on disputed matters. Covad asks this Commission to believe that a recommendation by staff is something more than what it truly is – a recommendation. Florida Statutes, Section 350.001, clearly provides "[t]he Florida Public Service Commission shall perform its duties independently." And, as succinctly stated by the Commission in Docket No. 001305-TP regarding a similar request by another CLEC, "[a]ssuming arguendo that our staff's recommendation were flawed, we are the decision-makers in this case" not staff. See Order No. 02-0413-TP at 18.

Simply put, contrary to Covad's allegations, it is the job of the Commissioners to independently consider and evaluate all of staff's recommendations. BellSouth is unaware and Covad has not alleged any facts that prevented the *Commissioners* from exercising their statutorily-mandated independent judgment in this case. Notably, the investigation conducted by the Commission's Office of the General Counsel into the emails at issue belies Covad's insinuations. Specifically, the Office of the General

Counsel found that (1) no party was adversely impacted by the events giving rise to Covad's request and (2) no Commissioner even read the emails in question.

Further, any suggestion of nefarious activity by BellSouth is incorrect and devoid of any evidence in support. BellSouth did not ask to receive random, anonymous emails from an unidentified individual; BellSouth has disclosed to the Commission all of the emails it received from Ms. Moss or individuals using various pseudonyms; BellSouth has not received any other communications from Ms. Moss (appropriate or otherwise) or from individuals using her alleged pseudonyms in this or any other proceeding; and, assuming that Ms. Moss did in fact send all of the emails in question, BellSouth has no knowledge about the reasons why she sent the unsolicited emails in the first place. Given these facts, the Commission has ample reason to reject Covad's request.

Covad also takes exception to the portions of the staff recommendation that Ms. Moss prepared; namely Issues 16 and 17, which concern line sharing. Covad suggests that the Commission reached its decision on this issue only because Ms. Moss was biased. This erroneous implication is contradicted by a prior Commission staff recommendation. Specifically, in Docket No. 040601-TP, the Commission staff recommended that "line sharing is not a 'local loop transmission from the central office to the customer's premises' as required by checklist item 4. If line sharing does not come under checklist item 4 and therefore is not required to be provided pursuant to section 271, staff believes BellSouth is no longer obligated to provide Covad access to new line sharing arrangements after October 2004." (Sept. 24, 2004, Staff Recommendation, p. 11). Ms. Moss is not listed as a participating staff member in Docket No. 040610-TP and to BellSouth's knowledge did not participate in that proceeding. Thus, the remedy that Covad seeks -- that staff other than Ms. Moss prepare a recommendation on the line sharing issues -- already took place and staff other than Ms. Moss reached the same conclusion as she and the Commission here.

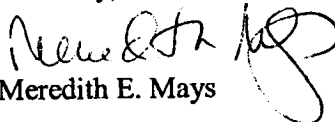
Moreover, as a practical matter, Covad's requested relief makes little sense given that the Commission properly determined that it has no authority over Section 271 checklist items. Consequently, even if the Commission adopted Covad's flawed legal reasoning in the context of a Commission-initiated reconsideration motion, it has already found that it would have no enforcement authority over line sharing.

Additionally, Covad, in its attempt to persuade this Commission to grant the relief it requests, misstates state commission precedent on this issue. As BellSouth made clear in its post-hearing brief, state commissions in Illinois, Massachusetts, Michigan, and Rhode Island have ruled in a manner consistent with this Commission. Thus, Covad is incorrect in stating this Commission "is the only commission in the nation" to rule adversely to its position on the line sharing issue.

Finally, BellSouth does agree that all parties appearing before the Commission are entitled to fairness and impartiality but disputes that the Commission did not provide such treatment to Covad or any other CLEC in this proceeding. And no matter how hard Covad tries, an adverse ruling by the Commission does not equate into bias by the Commissioners. Accordingly, while BellSouth does not believe that reconsideration of the issues that Ms. Moss prepared, or reconsideration of the issues that were the subject of the emails in question is necessary to ensure fairness and impartiality to the parties, BellSouth has no objection to *sua sponte* reconsideration of Issues 5, 13, 16-18, and 22 by the panel of Commissioners that heard this case if that panel deems such action appropriate. BellSouth would respectfully request that, should the panel take such action, reconsideration occur as expeditiously as possible, preferably by the next regularly scheduled agenda session.

In no event, however, should the Commission withdraw or suspend its current rulings on these issues while additional review is being conducted. It is essential to the orderly process of business that CLECs and BellSouth implement contract amendments consistent with the Commission's decision by March 11, 2006. If the Commission reaches a different conclusion after further examination, the parties can handle it via an additional amendment. The Commission should not allow Covad's request to circumvent the Commission's directive to execute amendments compliant with its decision by February 27, 2006, unless otherwise mutually agreed to.

Sincerely,


Meredith E. Mays

cc: Governor Bush
Senator Lee Constantine
Commissioner Isilio Arriaga
Commissioner J. Terry Deason
Commissioner Matthew M. Carter II
Commissioner Katrina J. Tew
Richard D. Melson
Blanco Bayo
Patrick Wiggins
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Kira Scott
Beth Salak
Nancy White
Gene Watkins
Parties of Record

STATE OF SOUTH CAROLINA

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CERTIFICATE OF SERVICE

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COUNTY OF RICHLAND

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The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused BellSouth's letter dated February 21, 2006 in Docket No. 2004-316-C to be served upon the following this February 21, 2006.

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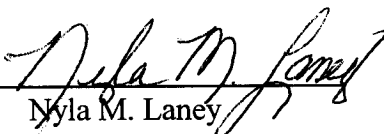
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